

Sub 2 =

Sub 3 =

DRE 1 =

DRE 2 =

DRE 3 =

Business A =

Business B =

Business C =

Segment 1 of Business B =

Segment 2 of Business B =

State A =

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Debt A =

Debt B =

Business C  
Controlled Securities =

Excluded Assets =

Trademarks =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

Commercial Matters  
Agreement =

Employee Matters =

Agreement

Non-compete Agreements =

Separation Agreement =

Suretyship Agreement =

Tax Matters Agreement =

Transition Services Agreement =

D Agreements =

E Agreements =

Day 1 =

Dear :

This letter responds to your authorized representatives' letter dated September 11, 2015, requesting rulings on certain Federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The information provided in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2015-1 I.R.B. 19, regarding one or more significant issues under sections 301, 305, 355, 361, or 368. The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

### **SUMMARY OF FACTS**

Distributing 2, a publicly-traded State A corporation, is a holding company and the parent of a worldwide group of entities (the “Distributing 2 Worldwide Group”). Distributing 2 is also the common parent of an affiliated group of corporations that file a consolidated Federal income tax return. Distributing 2 has a single class of stock outstanding, its common stock.

Distributing 2 owns all of the member interests in DRE 1, an entity disregarded as separate from Distributing 2 for Federal income tax purposes. DRE 1, in turn, owns all of the stock of Distributing 1.

Distributing 1 directly and indirectly conducts Business A, Business B, and Business C, domestically and internationally. Business B includes Segment 1 of Business B and Segment 2 of Business B. Distributing 1 has outstanding indebtedness, including Debt A and Debt B (“the Distributing 1 Debt”).

Sub 1, a wholly-owned subsidiary of Distributing 1, conducts Segment 2 of Business B. Sub 2, a wholly-owned subsidiary of Distributing 1, and Sub 2’s regarded and disregarded entities, conduct Business C. Domestic and foreign Trademarks, which are used in Business C, are owned by DRE 2 and DRE 3, each of which is an entity disregarded as separate from Distributing 1 for Federal income tax purposes.

Distributing 2 has submitted financial information indicating that both Segment 1 of Business B and Segment 2 of Business B annually had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years. Segment 1 of Business B currently has more than d full time employees and has had annual operating revenues in excess of \$e in each of the past five years. Segment 2 of Business B currently has more than f full-time employees and annual operating revenues in excess of \$g in each of the past five years. The book value of the assets of each of Segment 1 of Business B and Segment 2 of Business B are less than

h% of the book value of the assets of the Distributing 1 SAG (defined below) following the Business B External Distribution (defined below). It is expected that revenues from each of Segment 1 of Business B and Segment 2 of Business B will constitute approximately i% of the gross revenues of the Distributing 1 SAG after the Business B External Distribution.

### **PROPOSED TRANSACTION**

In the Proposed Transaction, Distributing 2 will distribute Business B and Business C to its public shareholders, pursuant to an overall plan. The relevant steps of the Proposed Transaction are set forth below:

- (i) Through a series of restructuring transactions, the ownership of all assets used in domestic Business A (including the Excluded Assets) and subsidiaries that conduct domestic Business A (the “Domestic Business A Assets”) will be separated from the assets used in domestic Business B and subsidiaries that conduct domestic Business B (the “Domestic Business B Assets”) and any domestic assets used in Business C (other than Trademarks held by DRE 2) and subsidiaries that conduct domestic Business C.
- (ii) Through a series of restructuring transactions, the ownership of all assets used in foreign Business A and subsidiaries that conduct foreign Business A (the “Foreign Business A Assets”) will be separated from the assets used in Foreign Business B and subsidiaries that conduct foreign Business B (the “Foreign Business B Assets”) and any foreign assets associated with Business C (other than Trademarks held by DRE 3) and subsidiaries that conduct Foreign Business C (the “Foreign Business C Assets”).
- (iii) Distributing 1 will form Domestic Business A Controlled as a State A corporation (which may occur earlier in the sequence of steps) and will contribute the Domestic Business A Assets (including membership interests in DRE 2, which owns the domestic Trademarks) to Domestic Business A Controlled in exchange for Domestic Business A Controlled stock (the “Domestic Business A Controlled Stock”), the assumption of associated liabilities, and potentially cash proceeds funded by a borrowing from unrelated third party lenders (the “Cash Proceeds”) by Domestic Business A Controlled. (This contribution is referred to as the “Domestic Business A Contribution.”)
- (iv) Distributing 1 will form Foreign Business A Controlled as a State A corporation (which may occur earlier in the sequence of steps) and will contribute the Foreign Business A Assets (including membership interests in DRE 3, which owns foreign Trademarks) to Foreign Business A Controlled in exchange for Foreign Business A Controlled stock (the “Foreign Business A Controlled Stock”), the assumption of associated liabilities, and potentially Cash Proceeds funded by a

borrowing by Foreign Business A Controlled. (This contribution is referred to as the “Foreign Business A Contribution.”)

In the j-month period following the Domestic Business A Contribution and the Foreign Business A Contribution, as the case may be, Distributing 1 will use an amount of cash equal to or greater than any Cash Proceeds to make distributions to its shareholders, pay its liabilities to third party creditors (which could include ordinary course liabilities whenever incurred and principal, interest, and associated consent and other fees on bank debt, bonds, and other borrowings), or a combination thereof. Distributing 1 will not set aside, trace or otherwise segregate the actual Cash Proceeds.

- (v) a. One or more financial institutions (collectively, the “Financial Institution”) may acquire Distributing 1 Debt composed of some or all of Debt A, a portion of Debt B, or a combination thereof (which may occur earlier in the sequence of steps). Financial Institution may (i) enter into hedging (interest and/or credit risk) or financing arrangements with respect to the Distributing 1 Debt, provided that neither Distributing 1 nor any member of its affiliated group or other entity related to Distributing 1 will be a party to such arrangements, or (ii) transfer Distributing 1 Debt to an affiliate of Financial Institution for legal or regulatory reasons. At least k days after the Financial Institution acquires the Distributing 1 Debt (if any), Financial Institution and Distributing 1 will enter into an exchange agreement (the “Securities Exchange Agreement”) pursuant to which Distributing 1 and Financial Institution will agree to exchange an amount of Distributing 1 Debt for the Business C Controlled Securities received by Distributing 1 in the Business C Controlled Contribution (the “Business C Securities Exchange”). A portion of the Business C Controlled Securities may be exchanged with historic holders of Debt A, in which case such holders would become party to the Securities Exchange Agreement and will participate in the Business C Securities Exchange. The pricing for the Business C Securities Exchange likely will be a fixed ratio determined on the date the Securities Exchange Agreement is entered into based on the fair market values for the Business C Controlled Securities and the Distributing 1 Debt on that date. The fair market value of the Distributing 1 Debt is expected to be determined taking into account relevant factors that are intended to reflect the costs to Financial Institution of acquiring the Distributing 1 Debt.

Distributing 1 also is expected to make representations in the Securities Exchange Agreement, including representations as to the absence of material non-public information and Distributing 1’s intention to complete the Business C Securities Exchange. Distributing 1 will indemnify Financial Institution for any losses arising out of any breaches of such representations (including any material misstatements or omissions in Distributing 1’s filings with the Securities & Exchange Commission). Additionally, Distributing 1 will reimburse



Financial Institution for certain expenses (including legal expenses) for which Financial Institution would customarily receive reimbursement in similar transactions. Financial Institution is not expected to make representations as to the Federal income tax treatment or status of their customary inventory financing activities. Prior to entering into the Securities Exchange Agreement, Financial Institution will conduct due diligence with Business C Controlled at a level consistent with an underwriting of debt securities.

If the Securities Exchange Agreement is entered into, it is also expected that an underwriting agreement with Financial Institution (and any participating historic holders of Distributing 1 Debt) will be entered into at the same time, pursuant to which there will be an offering of the Business C Controlled Securities to investors.

- b. Distributing 1 will form Business C Controlled (which may occur earlier in the sequence of steps) and will contribute all of the stock of Sub 2 to Business C Controlled and potentially certain other assets related to Business C in exchange for (i) Business C Controlled stock (“the Business C Controlled Stock”), (ii) the assumption of associated liabilities, and (iii) potentially the Business C Controlled Securities. (This contribution is referred to as the “Business C Controlled Contribution.”)
- (vi) Distributing 1 will distribute to DRE 1: (i) the Domestic Business A Controlled Stock (the “Internal Domestic Business A Distribution”), (ii) the Foreign Business A Controlled Stock (the “Internal Foreign Business A Distribution”), and (iii) the Business C Controlled Stock (“the Internal Business C Distribution”; collectively the “Internal Distributions”). DRE 1, in turn, will distribute the Business C Controlled Stock and Distributing 1 to Distributing 2. In connection with this step, an additional disregarded entity may be interposed between Distributing 2 and DRE 1 for financing reasons.
- (vii) No earlier than at least 1 days after the acquisition of Distributing 1 Debt by Financial Institution in step (v) a, the Business C Securities Exchange will close. It is expected that the Business C Securities Exchange will occur close in time to the Internal Business C Distribution, but, depending on market conditions, could occur up to m months prior to, or up to n months following, the Internal Business C Distribution, as part of the plan of reorganization.
- (viii) Distributing 2 will distribute the Business C Controlled Stock to Distributing 2’s shareholders pro rata (the “External Business C Distribution”).
- (ix) Distributing 1 will form Sub 3 as a State A corporation (which may occur earlier in the sequence of steps). Distributing 1 will lease to Sub 3 the Domestic Business B Assets and the Foreign Business B Assets other than assets associated with

Segment 1 of Business B or Segment 2 of Business B or certain assets which may be contributed to Sub 3 or owned by another regarded subsidiary of Distributing 1 (“the Leases”). Sub 3 will enter into D Agreements with Domestic Business A Controlled and Foreign Business A Controlled to manage the day-to-day operations of Sub 3’s Business B assets. Distributing 1 will enter into E Agreements with Domestic Business A Controlled regarding Segment 1 of Business B. Distributing 1 will contribute certain assets associated with Segment 2 of Business B to Sub 1. These Leases, D Agreements, and E Agreements will be effective as of the beginning of the day following the date of the External Business B Distribution (described below).

- (x) Distributing 2 will distribute the Distributing 1 stock to Distributing 2’s shareholders (“the External Business B Distribution”). The External Business B Distribution will be made pro rata to Distributing 2’s shareholders, will be effected as an exchange for Distributing 2 shares held by one or more shareholders (pursuant to a generally applicable exchange offer or a negotiated agreement), or a combination thereof.
- (xi) Distributing 1 will elect to be taxed under Section 856(c)(1) as a real estate investment trust (“REIT”) for its first taxable year following the External Business B Distribution (the “First REIT Year”). Each of Sub 1 and Sub 3 will elect to be taxed as a taxable REIT subsidiary within the meaning of Section 856(l). Other previously regarded corporate subsidiaries of Distributing 1 will become qualified REIT subsidiaries within the meaning of Section 856(i).
- (xii) Distributing 1 will declare during the First REIT Year, and pay no later than Day 1 of the following year, a dividend payable in cash or stock at the election of its shareholders (the “Purging Distribution”). The amount of the Purging Distribution is intended to be at least equal to Distributing 1’s earnings and profits in years prior to its First REIT Year.

Distributing 1 intends to make the Purging Distribution with a combination of cash and Distributing 1 shares. Each Distributing 1 shareholder will be allowed to elect to receive such shareholder’s distribution in either cash or Distributing 1 shares of equivalent value, subject to a limitation on the amount of cash to be distributed in the aggregate to all shareholders (the “Cash Limitation”). If a shareholder fails to make a valid election by the election deadline, that shareholder will be deemed to have made an election to be determined by Distributing 1 at Distributing 1’s sole discretion. To the extent necessary, Distributing 1 will issue cash in lieu of fractional shares of stock. Although Distributing 1 has not yet determined the amount of the Cash Limitation, it will not be less than a percent of the Purging Distribution (without regard to any cash that may be paid in lieu of fractional shares).

If the total number of shares for which an election is made to receive a distribution in cash would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limitation, then all shareholders electing to receive cash will receive cash on all such shares. On the other hand, if too many shareholders elect to receive cash, each shareholder electing to receive cash will receive a pro rata amount of cash corresponding to the shareholder's respective entitlement under the Purging Distribution declaration, but in no event will any shareholder electing to receive cash receive less than 0 percent of the shareholder's Purging Distribution amount in cash.

The calculation of the number of shares to be received by any shareholder will be determined, over a period of up to 6 weeks, ending as close as practicable to the payment date of the Purging Distribution, based on a formula using market prices that is designed to equate the value of the number of shares to be received with the amount of cash that could be received instead. The charter for Distributing 1 will contain ownership limitations and transfer restrictions, and the stock distributed to a shareholder pursuant to the Purging Distribution will be subject to such ownership limitations and transfer restrictions.

In connection with the Proposed Transaction, Distributing 2, Business C Controlled, and Distributing 1 will enter into certain post-separation agreements and arrangements (the "Continuing Arrangements"), which will include: a Separation Agreement, a Transition Services Agreement for a period not to exceed 3 years unless extended by mutual agreement by the parties on arms' length terms; a Tax Matters Arrangement; an Employee Matters Agreement; Commercial Matters Agreements; Suretyship Agreements; and Non-compete Agreements. In addition, with respect to Distributing 2, Distributing 1, and Business C Controlled, it is possible that the board of directors of one company will have a minority of members who constitute a minority of the members of another company. The officers of Distributing 2, Distributing 1, and Business C Controlled are not expected to overlap.

## REPRESENTATIONS

- (i) The five years of financial information submitted on behalf of Segment 1 of Business B and Segment 2 of Business B conducted by the Distributing 1's separate affiliated group, within the meaning of section 355(b)(3) (the "Distributing 1 SAG"), are representative of its present operations, and with regard to such operations, there have been no substantial changes since the date of the last financial statements submitted.
- (ii) The Distributing 1 SAG neither acquired Segment 1 of Business B nor Segment 2 of Business B nor acquired control of an entity conducting Segment 1 of Business B or Segment 2 of Business B during the five-year period prior to the

Proposed Transaction in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

- (iii) Following the External Business B Distribution, the Distributing 1 SAG will continue Segment 1 of Business B independently and with its separate employees (except as provided pursuant to the Continuing Arrangements).
- (iv) Any Distributing 1 Debt exchanged for Business C Controlled Securities pursuant to the Business C Securities Exchange was not incurred in anticipation of the Business C Securities Exchange.
- (v) The Business C Controlled Securities will qualify as securities for purposes of the application of section 361(a).

### **RULINGS**

Based solely on the information submitted and the representations set forth above, and provided the relevant transactions otherwise qualify under sections 368(a)(1)(D) and 355, we rule as follows:

- (1) The relative fair market value of the gross assets of Segment 1 of Business B as compared to the fair market value of the gross assets of the Distributing 1 SAG will not prevent Segment 1 of Business B from qualifying as an active trade or business for the purposes of section 355(b) with respect to the Internal Distributions and the External Business B Distribution.
- (2) Taking into account the involvement of Financial Institution in the Business C Securities Exchange, Financial Institution and each participating historic holder of the Distributing 1 Debt will be treated as a Distributing 1 creditor to which Business C Securities are transferred in connection with the Internal Business C Distribution for purposes of Section 361(c)(3), and the Business C Securities will be treated as being distributed in pursuance of the Internal Business C Distribution plan of reorganization for purposes of section 361(c).
- (3) The cash received by Distributing 1 in the Domestic Business A Contribution and the Foreign Business A Contribution will be treated as being distributed pursuant to the Internal Domestic Business A Distribution plan of reorganization and the Internal Foreign Business A Distribution plan of reorganization, respectively, under sections 361(b)(1) and 361(b)(3).
- (4) Any and all of the cash and stock distributed in the Purging Distribution by Distributing 1 to its shareholders will be treated as a distribution of property with respect to its stock to which section 301 applies (sections 301 and 305(b)).

- (5) The amount of the distribution of the stock received by any stockholder pursuant to the Purging Distribution will be considered to equal the amount of money which the stockholder could have received instead.

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Additionally, no opinion is expressed concerning whether Distributing 1 otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code. Furthermore, this letter does not provide any rulings under sections 856 or 857. No opinion is expressed as to whether the Purging Distribution will satisfy the requirements of section 857(a)(1). Finally, no opinion is expressed as to whether the Purging Distribution is to be considered preferential under section 562(c).

### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Isaac W. Zimbalist  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel (Corporate)